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IN THE SUPREME COURT OF THE STATE OF UTAH

- - - - -

BENJAMIN AMADOR, :

Appellant, :

-VS- :

Case No. 12059

DEPARTMENT OF EMPLOYMENT :

SECURITY OF THE STATE :

OF UTAH, :

Respondent. :

- - - - -

BRIEF OF APPELLANT

- - - - -

On Petition for Review by the Supreme Court
of the Decision of the Department of Employ-
ment Security of the State of Utah

- - - - -

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FILED

JUL 6 1970

Clark, Supreme Court, Utah

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STATEMENT OF NATURE OF CASE

This is an appeal from a decision of the Department of Employment Security, denying appellant unemployment benefits and ordering appellant to repay \$1,326.00 for which appellant was allegedly not legally eligible.

DISPOSITION OF CASE BELOW

By final decision dated March 18, 1970, the Board of Review affirmed the decision of the Appeals Referee dated January 6, 1970, denying appellant's claim for unemployment benefits for certain weeks and ordering appellant to repay moneys received for said weeks in the total amount of \$1,326.00.

RELIEF SOUGHT ON APPEAL

Appellant seeks reversal of the decision of the Department of Employment Security that appellant was overpaid in the amount of \$1,326.00, it being appellant's contention that he was fully entitled to receive all of said amount.

STATEMENT OF MATERIAL FACTS

The facts are not in controversy. The only issue is as to what facts are material and what legal conclusions are to be drawn from the facts.

It is undisputed that for the weeks ending March 29, April 12 through May 3, and May 17 through October 14, 1969, appellant's wife signed his weekly claims for benefits. (R. 31) It is also agreed that appellant received a total of \$1,326.00 in benefits pursuant to said claims. (R. 33) It is true, as found by the Referee, that the form upon which appellant's claims were submitted states: "THIS CLAIM MUST BE PERSONALLY SIGNED BY THE CLAIMANT." (R. 31) Admittedly, there was "nothing physically or mentally that prevented the claimant from signing his own weekly claim forms each week during the period in question." (R. 32)

On the other hand, there is nothing anywhere in the record to suggest that appellant was ever in any way notified that his failure personally to sign his claims might result not only in denial of benefits but also in his being required to repay benefits for which he had not personally signed.

There is nothing in the record to suggest that appellant was not in fact fully entitled to unemployment benefits for each of the weeks in question. The Board of Review recognized the validity of that assertion in its statement that "had these claims been filed by the claimant, this Board would have been constrained to remand the matter back to the Appeals Referee for the taking of additional testimony on the question of the availability of the claimant." (R. 6)

On December 23, 1969, appellant and his wife appeared before the Referee and were examined by him, under oath, extensively and without objection or interference by appellant's counsel who was present at the hearing. A reading of the 16 pages of testimony (R. 14-30) makes abundantly clear that the weekly claims signed by appellant's wife were factually correct and honestly made by her, and that Mrs. Amador had

been speaking the simple truth in an earlier written statement taken from her by the Department on October 8, 1969:

"My husband, the above named, signed his claims for the week ending March 8, March 15, March 22, and April 5, 1969.

"As his wife (Frances) I have signed all other claims for him. That is, I would complete the claim and sign his name to the card.

"I really didn't think it mattered very much. He was in town all the time. I just started signing them all and that's all there was to it.

"We didn't intend any fraud by it. He was available for work all the time. He received and endorsed all the warrants."
(R. 17-18)

At the outset of the hearing before the Referee on December 23, 1969, counsel appeared with appellant and clearly stated his legal position, inviting the Referee to examine appellant and his wife on the merits:

"(Mr. Young) Now if this were a case, and that is why Mr. Amador is here to answer questions about it, if this were a case where his failure to personally sign cards was related to a desire by him to avoid responsibility for statements which were made, then in such a case this regulation would be reasonable. I can see that it may serve a reasonable purpose, but we are saying -- applied to this particular

case where Mr. Amador has nothing to hide, and is here to testify, as well as his wife, under oath about the facts, the representation that were made under his signature - that in this situation, that the regulation is contrary to the purpose of the statute. . . And that is our legal position, and Mr. Amador is here to speak fully and frankly under oath about the circumstances during the period in question, and whether there is anything that might disqualify him from benefits. But we feel that the facts were accurately stated. The fact that Mrs. Amador admittedly signed his name on some of these cards during this period - does not alter the question whether, on the facts, he was entitled to the benefits.

"Referee Do you want to question Mr. Amador further on this point, or do you want me to proceed and get the information I would like?

"Mr. Young Perhaps if you would just go ahead." (R. 16)

The Referee's subsequent examination of appellant and his wife corroborated that appellant was eligible for benefits during the weeks his wife signed the claims:

"Referee Now have those as a general rule, rather than putting it down for every time, as a general rule, those that you did sign on the weekly claims themselves, did you complete the reverse side of them as to the information concerning availability and general information about the claimant?

"Mrs. Amador Yes.

"Referee Did you make a point of sitting down and talking with your husband concerning this matter, or is it just the fact that you as a general rule assumed you knew what your husband was doing when you completed these?

"Mrs. Amador Well, I knew what he was doing. I didn't have to question him.

"Referee Some of these questions, for example, ask: 'I refused work, if yes explain below,' 'I failed to apply for work after being notified,' 'I was self-employed,' 'I was attending school,' 'I traveled away from home,' a question in regards to other benefits received, and 'I now have a steady job.' Those are the basic questions asked on the reverse side. Is that correct?

"Mrs. Amador Yes, that is right.

"Referee And you felt that you had sufficient knowledge to answer these questions, is that what you are telling me?

"Mrs. Amador Yes." (R. 19)

* * *

"Referee You have been present during the testimony of your wife, is that correct?

"Mr. Amador Yes, I have.

"Referee You have had occasion to look at the claims that she was looking

at at the time, these weekly claims, at the time she was going through them, is that correct?

"Mr. Amador Yes.

"Referee Is there anything in her testimony that you do not agree with?

"Mr. Amador No, there isn't.

"Referee To your knowledge, what she has testified to would be correct then?

"Mr. Amador Yes.

"Referee Mr. Young, would you like to pursue any further in regards to a couple of statements made in your appeal?

"Mr. Young Yes. Mr. Amador, did you--were you aware that your wife was making out these claim cards each week when she did so? Were you aware that she was?

"Mr. Amador Yes, I was.

"Mr. Young All right. And were you--was this with your consent?

"Mr. Amador Yes, it was." (R. 23)

* * *

"Mr. Young Mr. Amador, to the best your knowledge, were the factual statements that your wife signed to on these cards correct? Did she state the correct facts? And if you are not sure, would you like to look at the cards?

"Mr. Amador No, she put the right facts.

"Mr. Young Did she know your employment situation and whether or not you were working?

"Mr. Amador Oh, yes.

"Mr. Young She was living with you all this time?

"Mr. Amador I hope she was.

"Mr. Young Do you feel she was acting on your behalf when she did this?

"Mr. Amador Yes, uh-huh.

"Mr. Young To your knowledge?

"Mr. Amador Yes." (R. 24)

Following the foregoing examination of appellant and his wife, the Referee separated the witnesses (R. 11) and examined each with the other excluded from the room. Similar questions were asked about their backgrounds ; and activities. The Referee picked up a discrepancy with regard to a very recent job opportunity (which was not relevant to any of the weekly claims here in dispute) which appellant had not mentioned but his wife recalled.

"Referee . . . Mr. Amador, for your information, I have been asking your wife very similar questions to those I asked you while you were in here, the employers you contacted, and what she recalls concerning this. For your information, she might happen to make a statement on it, she indicated that you had contacted Central City to her knowledge several times during the past month.

Does this recall to your mind that that was possibly so?

"Mr. Amador Yes, uh-huh.

"Referee Is there any reason why you didn't refer that to me at the time, because I asked you the same question?

"Mr. Amador Well, at the time, I mean it--does this have anything to do with this here decision?

"Referee Yes. For the record, what I am trying to find out, see, you told me, or said in effect, that your wife knows what you are doing, and that she is able to complete these forms each week.

"Mr. Amador Oh, yes, she is more informed about it than I am, as far as that goes. I guess the last time I talked to them was just about four or five days ago, about a week ago I was talking to them seeing about working down there. Down at Central City there is a director down there, you know. It would be just part time, of course. It would be at night, taking care of the place.

"Referee I have no further questions. . . ." (R. 29)

We might add that Mr. Amador's statement about his wife being better informed than he was is understandable, in view of the fact that she was a B student in school (R. 15) whereas Mr. Amador was unable to do satisfactory work beyond the sixth grade level but was given passing

grades to keep him eligible for athletics until he dropped out in the eleventh grade at West High. (R. 20-21)

ARGUMENT

POINT I

THE DEPARTMENT'S DECISION ERRONEOUSLY INTERPRETS UCA 35-4-6(d) AND IS DIRECTLY CONTRARY TO THE PURPOSE OF THE WORKMAN'S COMPENSATION ACT.

The Department's decision in this case presents a simple question of law: Assuming that a claimant for workman's compensation was otherwise entitled to unemployment benefits and was paid such benefits, may he be required to repay the state for such benefits if it appears that he did not personally sign his claim form pursuant to a statement on the form saying only: "THIS CLAIM MUST BE PERSONALLY SIGNED BY THE CLAIMANT"?

First of all, it should be noted that the form says nothing about the possible consequences of having an agent sign the form for the claimant. (See copies of form at R. 42.) The form does inform the claimant that "the law provides penalties for false statements." (R. 42) However, there is no serious suggestion anywhere in the record that appellant or his wife made any false statement of fact which might be relevant or material to the

proper determination of his eligibility for unemployment benefits. The record is devoid of any facts which might controvert the sworn testimony of appellant and his wife that he was in fact eligible for all of the benefits received.

There is nothing in the language of UCA 35-4-6(d) to suggest a legislative intent to deprive an unemployed man of benefits retroactively on the ground that he didn't follow all of the instructions on an application form.

To the contrary, "This court has repeatedly held that the Workmen's Compensation Act should be liberally construed to effectuate its purposes, and where there is doubt, it should be resolved in favor of coverage of the employee." Jones v. California Packing Corp., 121 Utah 612, 615, 244 P.2d 640 (1952).

The purposes of the Act have been authoritatively stated by this court in the leading case of Singer Sewing Machine Co. v. Industrial Commission. 104 Utah 175, 134 P.2d 479 (1943):

"(a) The Unemployment Compensation Law was enacted under and as an exercise of the police power of the state.

"(b) Its purpose is remedial to protect the health, morals, and welfare of the people by providing a cushion against the shocks and rigors of unemployment.

"(c) Being remedial under the police power and not imposing limitations on basic rights, it should be liberally construed."

104 Utah at 189.

Rather than resolving doubts in favor of the unemployed claimant or "providing a cushion against the shocks and rigors of unemployment," the Department has seized upon a technicality of its own devising to deny appellant benefits to which he was clearly entitled. We believe the Department's position is diametrically opposed to the purposes of the Workman's Compensation Act as interpreted repeatedly by this court.

POINT II

THE DEPARTMENT'S DECISION IS SO ARBITRARY AND UNREASONABLE AS TO CONSTITUTE A DENIAL OF DUE PROCESS OF LAW.

The state has suffered no pecuniary loss which can be rationally related to appellant's failure personally to sign his weekly claims. There is no question but that appellant was entitled to the benefits paid to him; the record establishes that the claims signed by his wife were factual and correct. Appellant and his

wife intended no fraud upon the state, and in fact no fraud occurred. Yet the Department takes the position that because appellant permitted his wife to sign the claim forms, appellant (who at the time of the hearings was still unemployed) must repay more than \$1,300.00 to the state.

We have not as yet been cited a regulation which supports the Department's position. The closest thing to such a regulation is the statement on the claim form which says: "THIS CLAIM MUST BE PERSONALLY SIGNED BY THE CLAIMANT." (R. 42) The form does not go on to explain the consequences of noncompliance with that statement, any more than it says what will happen if the claimant disregards similar statements that he is to sign "In ink" or that he must "NOT WRITE IN THIS SPACE." (See R. 42.)

We do not question the utility or reasonableness of each of the instructions on the claims form. They undoubtedly serve useful functions in the processing of claims. The question is whether innocent noncompliance with certain instructions justifies the Department in pursuing such a harsh, punitive course of action against appellant. We believe that the

Department's position in this case is unauthorized by statute and is so arbitrary and capricious as to constitute a denial of due process of law under the Fourteenth Amendment to the United States Constitution and under Article 1, Section 7 of the Utah State Constitution.

CONCLUSION

The decisions of the Board of Review and of the Appeals referee should be reversed with instructions to reinstate appellant's benefits for the weeks ending March 29, April 12 through May 3, and May 17 through October 4, 1969, representating a total amount of \$1,326.00.

Respectfully submitted,

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